

## SUMMARY ANALYSIS OF AMENDED BILL

Author: Rainey Analyst: Marion Mann DeJong Bill Number: SB 1478

Related Bills: AB 1631, AB 1633, Telephone: (916) 845-6979 Amended Date: 04/13/98

SB 1425

Attorney: Doug Bramhall

Sponsor:

**SUBJECT:** Shift Burden Of Proof/Tax Collecting State Agencies

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended March 19, 1998.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

REMAINDER OF PREVIOUS ANALYSES OF BILL STILL APPLY.

OTHER - See comments below.

### SUMMARY OF BILL

This bill would do the following:

- State legislative intent to conform to the Internal Revenue Service Restructuring and Reform Act.
- Add a new provision to the Government Code to shift the burden of proof from taxpayers to any state agencies collecting taxes in any court or administrative proceeding under certain conditions.
- Make legislative findings and declarations regarding the burden of proof, state tax collection agencies and public perception of the tax system.

### SUMMARY OF AMENDMENT

The April 13, 1998, amendments made the following changes.

- Added legislative intent to conform to the Internal Revenue Service Restructuring and Reform Act. This change made the bill internally inconsistent since subdivision (a) states intent to conform to the federal burden of proof legislation while subdivision (c) shifts the burden of proof

DEPARTMENTS THAT MAY BE AFFECTED:

\_\_\_ STATE MANDATE

\_\_\_ GOVERNOR'S APPOINTMENT

Board Position:

\_\_\_ S \_\_\_ O  
\_\_\_ SA \_\_\_ OUA  
\_\_\_ N \_\_\_ NP  
\_\_\_ NA \_\_\_ NAR  
\_\_\_ X \_\_\_ PENDING

Agency Secretary Position:

\_\_\_ S \_\_\_ O  
\_\_\_ SA \_\_\_ OUA  
\_\_\_ N \_\_\_ NP  
\_\_\_ NA \_\_\_ NAR  
DEFER TO \_\_\_\_\_

**GOVERNOR'S OFFICE USE**

Position Approved \_\_\_  
Position Disapproved \_\_\_  
Position Noted \_\_\_

Department/Legislative Director Date  
**Johnnie Lou Rosas 4/23/98**

Agency Secretary Date

By: Date:

from taxpayers to state agencies in a manner inconsistent with the pending federal legislation.

- Deleted the clear and convincing evidence standard for the burden of proof in cases involving fraud or intent to evade. Thus, the bill would provide the standard of the burden of proof for the Franchise Tax Board would be a preponderance of the evidence. The bill still appears to lower the standard of the burden of proof from clear and convincing evidence for civil cases involving fraud or intent to evade and from beyond a reasonable doubt for criminal cases involving fraud or intent to evade.
- Made minor technical changes.

Except for the technical considerations, the department's analyses of the bill as introduced February 3, 1998, and as amended March 19, 1998, still apply.